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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,198	03/02/2005	Erik C. Houge	HOUGE 31-I-3-30	3717
47396	7590	07/02/2007	EXAMINER	
HITT GAINES, PC			WELLS, NIKITA	
LSI Corporation			ART UNIT	PAPER NUMBER
PO BOX 832570				2881
RICHARDSON, TX 75083				
NOTIFICATION DATE		DELIVERY MODE		
07/02/2007		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@hittgaines.com

Office Action Summary	Application No.	Applicant(s)	
	10/505,198	HOUGE ET AL.	
	Examiner	Art Unit	
	Nikita Wells	2881	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 March 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 and 22-60 is/are pending in the application.
 - 4a) Of the above claim(s) 23-29 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20,22 and 30-60 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>06/21/07</u> |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Charles Gaines on June 21, 2007.

The Examiner initiated an interview with the Applicant in order to cancel claims that were found to be restrictable by the Examiner. In order to expedite the process of the examination of this application, the Applicant agreed to cancel claims 23-29 as follows:

2. Claims 23-29 are cancelled.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 and 22, and 30-60, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/505,197. Although the claims of the application are not identical to the claims of the copending application, the claims are not patentably distinct from each other and claim common subject matter disclosing a system and method for crystallographic metrology comprising: a sample holder for holding a crystalline sample; a first ion source for generating a first ion beam; a scanning actuator for controlling the relative movement between the first ion beam and the crystalline sample, the scanning actuator being controllable for directing the first ion beam at desired areas of the crystalline sample; an electron detector for detecting secondary electrons emitted from the crystalline sample; a first processing system for creating a contrast intensity image based upon secondary electron emissions from the crystalline sample; a second processing system programmed to provide crystallographic information based on the contrast image intensity data.

Independent claims 1 and 30 of the application cover the same material as independent claims 1 and 7 of the copending application. Independent claims 8 and 38 of the application cover the same material as independent claims 8 and 19 of the copending application. Independent claims 13 and 50 of the application cover the same material as independent claims

10 and 21 of the copending application. Many of the dependent claims of the application are similar to the dependent claims of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Except for the double patenting problem as outlined above, no other prior art was found to disclose or make obvious the key features of the applicant's invention.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Houge et al. (6,577,970 B2) disclose a method determining a crystallographic quality of a material located on a substrate.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikita Wells whose telephone number is (571) 272-2484. The examiner can normally be reached on 8:30 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Kim can be reached on (571) 272-2293. The central fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Nikita Wells

Primary Examiner, Art Unit 2881

June 21, 2007